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9
 10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 THE LARYNGEAL MASK COMPANY
 13 LTD. and LMA NORTH AMERICA,
 14 INC.,

15 Plaintiffs,

16 v.

17 AMBU A/S, AMBU INC., AMBU LTD.,
 and AMBU SDN. BHD.,

18 Defendants.

20 AMBU A/S, AMBU INC., AMBU LTD.,
 21 and AMBU SDN. BHD.,

22 Counterclaimants,

23 v.

24 THE LARYNGEAL MASK COMPANY
 25 LTD. and LMA NORTH AMERICA,
 INC.,

26 Counter-Defendants.

Case No. 3:07-cv-01988-DMS-NLS

**DECLARATION OF DENNIS M. FAIGAL
IN SUPPORT OF DEFENDANTS AMBU
A/S, AMBU INC., AMBU LTD., AND AMBU
SDN. BHD.'S REPLY IN SUPPORT OF
THEIR MOTION FOR LEAVE TO AMEND
ANSWER AND COUNTERCLAIMS**

Judge: Honorable Dana M. Sabraw
Date: August 22, 2008
Time: 1:30 p.m.
Courtroom: 10

1 I, Dennis M. Faigal, declare:

2 1. I am an associate with the law firm of Fenwick & West LLP, counsel to Defendants
3 Ambu A/S, Ambu Inc., Ambu Ltd., and Ambu Sdn. Bhd. (collectively, "Ambu"). I am an attorney
4 admitted to practice before this Court. I submit this declaration in support of Defendants Ambu
5 A/S, Ambu Inc., Ambu Ltd., and Ambu Sdn. Bhd.'s Reply in Support of Its Motion for Leave to
6 Amend Answer and Counterclaims. I have personal knowledge of the matters set forth herein, and
7 if called upon to do so, could and would testify competently thereto.

8 2. On or around May 28, 2008, Plaintiffs The Laryngeal Mask Company Ltd. and
9 LMA North America, Inc.'s (collectively "LMA") served its Rule 26 Initial Disclosures on
10 Ambu. Section III of LMA's Rule 26 Initial Disclosures indicates that LMA seeks to recover
11 damages in the amount of its lost profits or in an amount "not less than [sic] a reasonable royalty"
12 for Ambu's infringing use of the patent-in-suit." A true and correct copy of Plaintiffs' Fed. R.
13 Civ. P. Rule 26(a) Initial Disclosure Statement is attached as **Exhibit A**.

14 3. In Section I of its Rule 26 Initial Disclosures, LMA identified the following LMA
15 employees among the witnesses likely to possess discoverable information regarding the sales
16 and marketing of LMA's laryngeal mask airway devices in the United States: Thomas B.
17 Bendinelli, LMA's Director of Sales – West; Michael Masilonis, LMA's Director of Sales – East;
18 and Derek Evans, LMA's Executive Director of Marketing.

19 4. On or around May 28, 2008, Ambu served its Rule 26 Initial Disclosures on
20 LMA. In Section I of its Rule 26 Initial Disclosures, Ambu identified Frank Homa, an Ambu
21 general manager, as an individual likely to have discoverable information regarding the sales and
22 marketing of Ambu's laryngeal mask products. A true and correct copy of Defendants Ambu
23 A/S, Ambu Inc., Ambu Ltd., and Ambu Sdn. Bhd.'s Rule 26(a)(1) Initial Disclosures is attached
24 as **Exhibit B**.

25 5. On or around May 30, 2008, LMA served Plaintiffs' First Set of Requests for
26 Production of Documents and Things (Nos. 1 – 83) on Ambu. A true and correct copy of this
27 document is attached as **Exhibit C**.

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1 6. In LMA's product manual for its ProSeal, Unique, Classic, Flexible, and Flexible
2 Single Use products, LMA discloses that hypoglossal nerve injury and lingual nerve injury are
3 among the adverse effects that may be experienced by patients on which the LMA products are
4 used. A true and correct copy of the LMA Airway Instruction Manual, which is accessible via
5 LMA's website, is attached as **Exhibit D**.

6 7. In article entitled "Complications of Endotracheal Intubation and Other Airway
7 Management Procedures," describes some of the complications resulting from use of LMA's
8 laryngeal mask airway devices. According to the article, among the complications and side
9 effects caused by LMA's products is lingual nerve injury resulting from direct compressions of
10 the nerves by LMA's masks. A true and correct copy of this article is attached as **Exhibit E**.

11 I declare under the penalty of perjury under the laws of the United States of America that
12 the foregoing is true and correct. Executed this 15th day of August, 2008, at Mountain View,
13 California.

By: */s/ Dennis Faigal*
Dennis Faigal
E-mail: dfaigal@fenwick.com

INDEX OF EXHIBITS

Exhibit A	Plaintiff's Fed. R. Civ. P. Rule 26(a) Initial Disclosure Statement	Pages 1 – 7
Exhibit B	Defendants Ambu, A/S, Ambu Inc., Ambu Ltd., and Ambu Sdn. Bhd.'s Rule 26(a)(1) Initial Disclosures	Pages 8 – 12
Exhibit C	Plaintiffs' First Set of Requests for Production of Documents and Things (Nos. 1 – 83)	Pages 13 – 31
Exhibit D	LMA™ Airway Instruction Manual	Pages 32 – 54
Exhibit E	Article: " <i>Complications of Endotracheal Intubation and Other Airway Management Procedures</i> ," Indian J. Anaseth. 2005	Pages 55 – 65

CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that all counsel of record who are deemed to have
3 consented to electronic service are being served with a copy of this document via the Court's
4 CM/ECF system per Local Rule 5.2 on August 15, 2008.

By: /s/ Dennis Faigal
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ATTORNEYS AT LAW
MOUNTAIN VIEW